



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 20-1490; FRS 17468]

Preventing Illegal Radio Abuse through Enforcement Act (PIRATE Act)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts final rules pursuant to the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act). Section 2 of the PIRATE Act adds a new section to the Communications Act of 1934, as amended (the Communications Act), enumerated as section 511 and entitled “Enhanced Penalties for Pirate Radio Broadcasting; Enforcement Sweeps; Reporting.” This Order amends the Commission’s rules to implement that provision.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Shannon Lipp of the Office of the Bureau Chief, Enforcement Bureau, at Shannon.Lipp@fcc.gov or (202) 418-8192.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Order, DA 20-1490, adopted and released on December 17, 2020. The document is available for download at <https://docs.fcc.gov/public/attachments/DA-20-1490A1.pdf>. To request this document in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART, etc.), send an email to fcc504@fcc.gov or call the FCC’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Paperwork Reduction Act

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104-13. It does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office, pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

1. The PIRATE Act grants the Commission additional enforcement authority, including higher forfeiture penalties, against pirate radio broadcasters and any person who permits the operation of pirate radio broadcasting. Section 2 of the PIRATE Act adds a new section to the Communications Act of 1934, as amended (the Communications Act), enumerated as section 511 and entitled “Enhanced Penalties for Pirate Radio Broadcasting; Enforcement Sweeps; Reporting.” This Order amends section 1.80 of the Commission’s rules to implement that provision. We move directly to an order here because implementation of new section 511 entails no exercise of our administrative discretion and, therefore, notice and comment procedures are unnecessary under the “good cause” exception to the Administrative Procedure Act (APA).

2. New section 511 provides specific authority for the Commission to combat pirate radio broadcasting with enhanced penalties. Pirate radio broadcasting is defined as “the transmission of communications on spectrum frequencies between 535

and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.” 47 U.S.C. 511(h). Sections 511(a) and (b) permit forfeitures of up to \$100,000 per day, up to a maximum fine of \$2 million, for any person who “willfully and knowingly does or causes or suffers to be done” any pirate radio broadcasting. These enhanced forfeiture amounts are “in *addition* to any other penalties provided by law.” 47 U.S.C. 511(b) (emphasis added). Section 511(f) directs the Commission to “revise its rules to require that, absent good cause, in any case alleging a violation of subsection (a) or (b), the Commission shall proceed directly to issue a notice of apparent liability without first issuing a notice of unlicensed operation.”

3. We amend § 1.80 of our rules to implement section 511. First, we codify penalties for violations of section 511(a) or (b). Under the amended rule, the Commission has the authority to impose a penalty of up to \$100,000 per day, up to a maximum fine of \$2 million, against any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting, in addition to any forfeiture penalty amount that may be proposed under any other provision of the Communications Act. These amounts are subject to annual adjustments due to inflation. Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, 35 FCC Rcd 14879, 86 FR 3830 (Jan. 15, 2021) (EB 2020).

4. Second, consistent with section 511(f), we amend section 1.80 to provide that, absent good cause, the Commission shall, in the first instance, propose a penalty against any person who “willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.” In other words, absent good cause to do otherwise, the Commission will not first issue a notice of unlicensed operation to a person who engages in such conduct. In applying the good cause standard in section 511(f), we may consider Commission precedent concerning waiver of our regulations for good cause shown. In

general, this standard requires special circumstances warranting a deviation from the general rule and serving the public interest.

5. Consistent with previous decisions, we amend our rules without providing for prior public notice and comment. Our action here is ministerial because it simply effectuates regulations established by legislation and requires no exercise of administrative discretion. For this reason, we conclude that prior notice and comment would serve no useful purpose and is unnecessary. We therefore find that this action comes within the “good cause” exception to the notice and comment requirements of the APA.

6. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures. In section 511(f) of the Communications Act, Congress mandated the Commission to prescribe implementing regulations. Additionally, the enhanced penalties set forth in sections 511 (a) and (b) require codification in the Commission’s rules. Therefore, action on delegated authority is properly taken in this *Order* amending § 1.80 of our rules, which is part of the Commission’s general enforcement policies and procedures. In addition, because a notice of proposed rulemaking is not required for these rule changes, no regulatory flexibility analysis is required.

7. *Effective Date.* The rules adopted in this Order shall be effective 30 days after publication in the Federal Register.

8. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 511 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 511, and §§ 0.111(a)(22), 0.231(b), and 0.311(a)(1) of the Commission’s rules, 47 CFR 0.111(a)(22), 0.311(a)(1), that this Order IS ADOPTED.

9. IT IS FURTHER ORDERED that § 1.80 of the Commission’s rules, 47 CFR 1.80, is AMENDED as set forth in the Appendix.

10. IT IS FURTHER ORDERED that this Order and the foregoing amendments to the Commission's rules SHALL BE EFFECTIVE thirty (30) days after the date of publication in the **Federal Register**.

11. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

FEDERAL COMMUNICATIONS COMMISSION

Lisa Gelb,

Deputy Chief, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

§ 1.80 [Amended]

2. Amend § 1.80 as follows:

- a. Revising paragraph (a)(4);
- b. Redesignating paragraphs (a)(5) and (6) as paragraphs (a)(6) and (7) and adding a new paragraph (a)(5);
- c. Revising newly redesignated paragraph (a)(6);
- d. Redesignating the Note to paragraph (a) as Note 1 to paragraph (a);
- e. Redesignating paragraphs (b)(6) through (10) as paragraphs (b)(7) through (11) and adding a new paragraph (b)(6);
- f. Revising newly redesignated paragraphs (b)(9) and (10);
- g. Removing the Note to paragraph (b)(8) following newly redesignated paragraph (b)(10);
- h. Revising the heading of the table in newly redesignated paragraph (b)(11)(ii);
- i. Revising the Note following newly redesignated paragraph (b)(11);
- j. Revising the introductory text to paragraph (d); and
- k. Redesignating paragraphs (e) through (j) as paragraphs (f) through (k) and adding a new paragraph (e).

The revisions and additions read as follows:

§ 1.80 Forfeiture proceedings.

(a) * * *

(4) Violated any provision of sections 227(b) or (e) of the Communications Act or of §§ 64.1200(a)(1) through (5) and 64.1604 of this title;

(5) Violated any provision of section 511(a) or (b) of the Communications Act or of paragraph (b)(6) of this section;

(6) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code; or

* * * * *

(b) * * *

(6) *Forfeiture penalty for pirate radio broadcasting.* (i) Any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,023,640; and

(ii) Any person who willfully and knowingly violates the Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of the Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is party, relating to pirate radio broadcasting shall, in addition to any other penalties provided by law, be subject to a fine of not more than \$101,182 for each day during which such offense occurs, in accordance with the limit described in this section.

* * * * *

(9) *Maximum forfeiture penalty for any case not previously covered.* In any case not covered in paragraphs (b)(1) through (8) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$20,731 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$155,485 for any single act or failure to act described in paragraph

(a) of this section.

(10) *Factors considered in determining the amount of the forfeiture penalty.* In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

TABLE 1 TO PARAGRAPH (B)(10) -- BASE AMOUNTS FOR SECTION 503 FORFEITURES

Forfeitures	Violation amount
Misrepresentation/lack of candor	(¹)
Construction and/or operation without an instrument of authorization for the service	\$10,000
Failure to comply with prescribed lighting and/or marking	10,000
Violation of public file rules	10,000
Violation of political rules: reasonable access, lowest unit charge, equal opportunity, and discrimination	9,000
Unauthorized substantial transfer of control	8,000
Violation of children's television commercialization or programming requirements	8,000
Violations of rules relating to distress and safety frequencies	8,000
False distress communications	8,000
EAS equipment not installed or operational	8,000
Alien ownership violation	8,000
Failure to permit inspection	7,000
Transmission of indecent/obscene materials	7,000
Interference	7,000
Importation or marketing of unauthorized equipment	7,000
Exceeding of authorized antenna height	5,000
Fraud by wire, radio or television	5,000
Unauthorized discontinuance of service	5,000
Use of unauthorized equipment	5,000
Exceeding power limits	4,000

Failure to respond to Commission communications	4,000
Violation of sponsorship ID requirements	4,000
Unauthorized emissions	4,000
Using unauthorized frequency	4,000
Failure to engage in required frequency coordination	4,000
Construction or operation at unauthorized location	4,000
Violation of requirements pertaining to broadcasting of lotteries or contests	4,000
Violation of transmitter control and metering requirements	3,000
Failure to file required forms or information	3,000
Failure to make required measurements or conduct required monitoring	2,000
Failure to provide station ID	1,000
Unauthorized pro forma transfer of control	1,000
Failure to maintain required records	1,000

¹Statutory Maximum for each Service.

TABLE 2 TO PARAGRAPH (B)(10) -- VIOLATIONS UNIQUE TO THE SERVICE

Violation	Services affected	Amount
Unauthorized conversion of long distance telephone service	Common Carrier	\$40,000
Violation of operator services requirements	Common Carrier	7,000
Violation of pay-per-call requirements	Common Carrier	7,000
Failure to implement rate reduction or refund order	Cable	7,500
Violation of cable program access rules	Cable	7,500
Violation of cable leased access rules	Cable	7,500
Violation of cable cross-ownership rules	Cable	7,500
Violation of cable broadcast carriage rules	Cable	7,500
Violation of pole attachment rules	Cable	7,500
Failure to maintain directional pattern within prescribed parameters	Broadcast	7,000
Violation of broadcast hoax rule	Broadcast	7,000
AM tower fencing	Broadcast	7,000
Broadcasting telephone conversations without authorization	Broadcast	4,000
Violation of enhanced underwriting requirements	Broadcast	2,000

TABLE 3 TO PARAGRAPH (B)(10) -- ADJUSTMENT CRITERIA FOR SECTION 503 FORFEITURES

<i>Upward Adjustment Criteria</i>
(1) Egregious misconduct.
(2) Ability to pay/relative disincentive.
(3) Intentional violation.
(4) Substantial harm.
(5) Prior violations of any FCC requirements.
(6) Substantial economic gain.
(7) Repeated or continuous violation.
<i>Downward Adjustment Criteria</i>
(1) Minor violation.
(2) Good faith or voluntary disclosure.
(3) History of overall compliance.
(4) Inability to pay.

TABLE 4 TO PARAGRAPH (B)(10) -- NON-SECTION 503 FORFEITURES THAT ARE AFFECTED BY THE DOWNWARD ADJUSTMENT FACTORS¹

Violation	Statutory amount after 2021 annual inflation adjustment
Sec. 202(c) Common Carrier Discrimination	\$12,439, \$622/day.
Sec. 203(e) Common Carrier Tariffs	\$12,439, \$622/day.
Sec. 205(b) Common Carrier Prescriptions	\$24,877.
Sec. 214(d) Common Carrier Line Extensions	\$2,487/day.
Sec. 219(b) Common Carrier Reports	\$2,487/day.
Sec. 220(d) Common Carrier Records & Accounts	\$12,439/day.
Sec. 223(b) Dial-a-Porn	\$128,904/day.
Sec. 227(e) Caller Identification	\$11,905/violation. *\$35,715/day for each day of continuing violation, up to \$1,190,546 for any single act or failure to act

Sec. 364(a) Forfeitures (Ships)	\$10,366/day (owner).
Sec. 364(b) Forfeitures (Ships)	\$2,074 (vessel master).
Sec. 386(a) Forfeitures (Ships)	\$10,366/day (owner).
Sec. 386(b) Forfeitures (Ships)	\$2,074 (vessel master).
Sec. 511 Pirate Radio Broadcasting	\$2,023,640, \$101,182/day.
Sec. 634 Cable EEO	\$919/day.

¹Unlike section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with two exceptions, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. One exception is section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The other exception is section 227(e) of the Act, which provides maximum forfeitures per violation, and for continuing violations. The Commission will apply the factors set forth in section 503(b)(2)(E) of the Act and this table 4 to determine the amount of the penalty to assess in any particular situation. The amounts in this table 4 are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-section 503 forfeitures may be adjusted downward using the “Downward Adjustment Criteria” shown for section 503 forfeitures in table 3 to this paragraph (b)(10).

NOTE 2 TO PARAGRAPH (b)(10): *Guidelines for Assessing Forfeitures.* The

Commission and its staff may use the guidelines in tables 1 through 4 of this paragraph (b)(10) in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceilings per violation or per day for a continuing violation stated in section 503 of the Communications Act and the Commission's rules are described in paragraph (b)(11) of this section. These statutory maxima became effective September 13, 2013. Forfeitures issued under other sections of the Act are dealt with separately in table 4 to this paragraph (b)(10).

(11) * * *

(ii) * * *

TABLE 5 to PARAGRAPH (b)(11)(ii)

* * * * *

NOTE 3 TO PARAGRAPH (b)(11): Pursuant to Public Law 104-134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

* * * * *

(d) *Preliminary procedure in some cases; citations.* Except for a forfeiture imposed under sections 227(b), 227(e)(5), 511(a), and 511(b) of the Act, no forfeiture penalty shall be imposed upon any person under the preceding sections if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person:

* * * * *

(e) *Preliminary procedure in Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act) cases.* Absent good cause, in any case alleging a violation of subsection (a) or (b) of section 511 of the Act, the Commission shall proceed directly to issue a notice of apparent liability for forfeiture without first issuing a notice of unlicensed operation.

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